

AMENDED IN SENATE JUNE 19, 2014

AMENDED IN ASSEMBLY APRIL 7, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2578

Introduced by Assembly Member Dababneh

February 21, 2014

An act to amend Sections ~~10271 and 10295.6~~ *10271, 10271.1, 10295.6, and 10295.15* of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2578, as amended, Dababneh. Insurance: disability insurance: life insurance: accelerated death benefit.

Existing law governs the business of insurance, and defines various types of insurance for these purposes, including life insurance and disability insurance. Existing law generally makes the requirements imposed on disability insurance contracts inapplicable to life insurance, endowment, and annuity contracts, or supplemental contracts thereto, that provide supplemental benefits in case of death or dismemberment or loss of sight by accident, operate to safeguard contracts against lapse, or give a special surrender benefit or an accelerated death benefit, as specified. *Existing law requires that the supplemental benefit provide that the insurer may require that the insured provide written proof of occurrence or loss no less than 90 days after the termination of the period for which the insurer is liable, and, in the case of claim for any other occurrence or loss, within 90 days after the date of the occurrence or loss.* Existing law *also* requires that supplemental benefits specify any applicable exclusions and limits those exclusions to, among other things, a condition or loss caused by engaging in an illegal occupation.

This bill would *instead require that the supplemental benefit provide that the insurer may require, in the case of a claim for which the supplemental benefit provides any periodic payment contingent upon continuing occurrence or loss, that the insured provide written proof of occurrence or loss no less than 90 days after the termination of the period for which the insurer is liable, and, in the case of claim for any other occurrence or loss, that the insured provide written proof of occurrence or loss within 90 days after the date of the occurrence or loss. The bill would also include a condition or loss caused or substantially contributed to by engaging in aviation, other than as a fare-paying passenger, to the list of allowable exclusions to supplemental benefits.*

Existing law provides that supplemental benefits that operate to safeguard life insurance contracts against lapse are defined as a waiver of premium benefit or a waiver of monthly deduction benefit, as applicable, in which the insurer waives the premium or monthly deduction for a life insurance contract when the insured becomes totally disabled, as defined by the supplemental benefit, and where the waiver continues until the end of the insured's disability, or for the period specified by the supplemental benefit, consistent with specified requirements. Under those requirements, the waiver of premium or monthly deduction benefit continues for the period specified by the supplemental benefit, but may not be less favorable to the insured than certain terms, including that if the insured's total disability begins before the insured attains 60 years of age, that the insurer waive all premiums or monthly deductions due for the period of the total disability, and if the total disability extends to the insured's attainment of 65 years of age, that the insurer waive all further premiums or monthly deductions due.

This bill would change the above terms by instead requiring the insurer, if the insured's total disability begins before the insured attains 60 years of age, to waive all premiums or monthly deductions due for the period that the insured continues to be totally disabled.

Existing law defines an accelerated death benefit as a provision, endorsement, or rider added to a life insurance policy that provides for the advance payment of any part of the death proceeds, payable upon the occurrence of a qualifying event, as provided. The insurer is required to provide the policyholder or certificate holder with a report, at least monthly, of any accelerated death benefits paid out during the prior month, an explanation of any changes to the policy or certificate, death

benefits, and cash values on account of the benefits being paid out, and the amount of the remaining benefits that can be accelerated at the end of the prior month.

This bill would *require the insurer to provide the report no less than one month after the payment of the benefit, and would delete the requirement that the report be provided on a monthly basis.*

Existing law requires term life insurance policies to include a prominent statement on page one that the accelerated death benefit terminates with the policy.

This bill would instead require, if an accelerated death benefit is offered with an underlying term life insurance policy, that the accelerated death benefit include the required statement that the benefit terminates with the policy.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10271 of the Insurance Code is amended
2 to read:
3 10271. (a) Except as set forth in this section, this chapter shall
4 not apply to, or in any way affect, provisions in life insurance,
5 endowment, or annuity contracts, or contracts supplemental thereto,
6 that provide additional benefits in case of death or dismemberment
7 or loss of sight by accident, or that operate to safeguard those
8 contracts against lapse, as described in subdivision (a) of Section
9 10271.1, or give a special surrender benefit, as defined in
10 subdivision (b) of Section 10271.1, or an accelerated death benefit
11 as defined in Article 2.1 (commencing with Section 10295), in the
12 event that the owner, insured, or annuitant, as applicable, meets
13 the benefit triggers specified in the life insurance or annuity
14 contract or supplemental contract.
15 (b) For the purposes of this section, the term “supplemental
16 benefit” means a rider to or provision in a life insurance policy,
17 certificate, or annuity contract that provides a benefit as set forth
18 in subdivision (a).
19 (c) A supplemental benefit described in subdivision (a) shall
20 contain all of the following provisions. However, an insurer, at its
21 option, may substitute for one or more of the provisions a
22 corresponding provision of different wording approved by the

1 commissioner that is not less favorable in any respect to the owner,
2 insured, or annuitant, as applicable. The required provisions shall
3 be preceded individually by the appropriate caption, or, at the
4 option of the insurer, by the appropriate individual or group
5 captions or subcaptions as the commissioner may approve.

6 (1) A life insurance policy or annuity contract that contains a
7 supplemental benefit shall provide that the contract, supplemental
8 contract, and any papers attached thereto by the insurer, including
9 the application if attached, constitute the entire insurance or annuity
10 contract and shall also provide that no agent has the authority to
11 change the contract or to waive any of its provisions. This provision
12 shall be preceded individually by a caption stating "ENTIRE
13 CONTRACT; CHANGES:" or other appropriate caption as the
14 commissioner may approve.

15 (2) The supplemental benefit shall provide that reinstatement
16 of the supplemental benefit shall be on the same or more favorable
17 terms as reinstatement of the underlying life insurance policy or
18 annuity contract. Following reinstatement, the insured and insurer
19 shall have the same rights under reinstatement as they had under
20 the supplemental benefit immediately before the due date of the
21 defaulted premium, subject to any provisions endorsed in the rider
22 or endorsement or attached to the rider or endorsement in
23 connection with the reinstatement. This reinstatement provision
24 shall be preceded individually by a caption stating
25 "REINSTATEMENT:" or other appropriate caption as the
26 commissioner may approve.

27 (3) A supplemental benefit subject to underwriting shall include
28 an incontestability statement that provides that the insurer shall
29 not contest the supplemental benefit after it has been in force during
30 the lifetime of the insured for two years from its date of issue, and
31 that the supplemental benefit may only be contested based on a
32 statement made in the application for the supplemental benefit, if
33 the statement is attached to the contract and if the statement was
34 material to the risk accepted or the hazard assumed by the insurer.
35 This provision shall be preceded individually by a caption stating
36 "INCONTESTABILITY:" or other appropriate caption as the
37 commissioner may approve.

38 (4) The supplemental benefit shall provide either that the insurer
39 may accept written notice of claim at any time or that the insurer
40 may require that written notice of claim be submitted by a due date

1 that is no less than 20 days after an occurrence covered by the
2 supplemental benefit, or commencement of any loss covered by
3 the supplemental benefit, or as soon after the due date as is
4 reasonably possible. Notice given by or on behalf of the insured
5 or the beneficiary, as applicable, to the insurer at the insurer's
6 address or telephone number, or to any authorized agent of the
7 insurer, with information sufficient to identify the insured, shall
8 be deemed notice to the insurer. This provision shall be preceded
9 individually by a caption stating "NOTICE OF CLAIM:" or other
10 appropriate caption as the commissioner may approve.

11 (5) The supplemental benefit shall provide that the insurer, upon
12 receipt of a notice of claim, shall furnish to the claimant those
13 forms as are usually furnished by it for filing a proof of occurrence
14 or a proof of loss. If the forms are not furnished within 15 days
15 after giving notice, the claimant shall be deemed to have complied
16 with the requirements of the supplemental benefit as to proof of
17 occurrence or proof of loss upon submitting, within the time fixed
18 by the supplemental benefit for filing proof of occurrence or proof
19 of loss, written proof covering the character and the extent of the
20 occurrence or loss. This provision shall be preceded individually
21 by a caption stating "CLAIM FORMS:" or other appropriate
22 caption as the commissioner may approve.

23 (6) The supplemental benefit shall provide that the insurer may
24 require, *in the case of a claim for which the supplemental benefit*
25 *provides any periodic payment contingent upon continuing*
26 *occurrence or loss*, that the insured provide written proof of
27 occurrence or proof of loss no less than 90 days after the
28 termination of the period for which the insurer is liable, and, in
29 the case of claim for any other occurrence or loss, *that the insured*
30 *provide written proof of occurrence or proof of loss* within 90 days
31 after the date of the occurrence or loss. Failure to furnish proof
32 within the time required shall not invalidate or reduce the claim if
33 it was not reasonably possible to give proof within the time,
34 provided proof is furnished as soon as reasonably possible and,
35 except in the absence of legal capacity, no later than one year from
36 the time proof is otherwise required. This provision shall be
37 preceded individually by a caption stating "PROOF OF LOSS:"
38 or other appropriate caption as the commissioner may approve.

39 (7) The supplemental benefit shall provide that the insurer, at
40 its own expense, shall have the right and opportunity to examine

1 the person of the insured when and as often as the insurer may
2 reasonably require during the pendency of a claim and to make an
3 autopsy in case of death where it is not forbidden by law. This
4 provision shall be preceded individually by a caption stating
5 “PHYSICAL EXAMINATIONS:” or other appropriate caption
6 as the commissioner may approve.

7 (d) The commissioner shall not approve any contract or
8 supplemental contract for insurance or delivery in this state if the
9 commissioner finds that the contract or supplemental contract does
10 any of the following:

11 (1) Contains any provision, label, description of its contents,
12 title, heading, backing, or other indication of its provisions that is
13 unintelligible, uncertain, ambiguous, or abstruse, or likely to
14 mislead a person to whom the supplemental benefit is offered,
15 delivered, or issued.

16 (2) Constitutes fraud, unfair trade practices, or insurance
17 economically unsound to the owner, insured, or annuitant, as
18 applicable.

19 (3) Contains any actuarial information that is materially
20 incomplete, incorrect, or inadequate.

21 (e) A supplemental benefit described in subdivision (a) shall
22 not contain any title, description, or any other indication that would
23 describe or imply that the supplemental benefit provides long-term
24 care coverage.

25 (f) Commencing two years from the date of the issuance of the
26 supplemental benefit, no claim for loss incurred or disability, as
27 defined by the supplemental benefit, may be reduced or denied on
28 the grounds that a disease or physical condition not excluded from
29 coverage by name or specific description effective on the date of
30 loss had existed prior to the effective date on the coverage of the
31 supplemental benefit.

32 (g) With regard to supplemental benefits set forth in subdivision
33 (a), the supplemental benefit shall specify any applicable
34 exclusions, which shall be limited to the following:

35 (1) Condition or loss caused or substantially contributed to by
36 any attempt at suicide or intentionally self-inflicted injury, while
37 sane or insane.

38 (2) Condition or loss caused or substantially contributed to by
39 war or an act of war, as defined in the exclusion provisions of the
40 contract.

1 (3) Condition or loss caused or substantially contributed to by
2 active participation in a riot, insurrection, or terrorist activity.

3 (4) Condition or loss caused or substantially contributed to by
4 committing or attempting to commit a felony.

5 (5) Condition or loss caused or substantially contributed to by
6 voluntary intake of either:

7 (A) Any drug, unless prescribed or administered by a physician
8 and taken in accordance with the physician's instructions.

9 (B) Poison, gas, or fumes, unless they are the direct result of an
10 occupational accident.

11 (6) Condition or loss in consequence of the insured being
12 intoxicated, as defined by the jurisdiction where the condition or
13 loss occurred.

14 (7) Condition or loss caused or substantially contributed to by
15 engaging in an illegal occupation.

16 (8) Condition or loss caused or substantially contributed to by
17 engaging in aviation, other than as a fare-paying passenger.

18 (h) If the commissioner notifies the insurer, in writing, that the
19 filed form or actuarial information does not comply with the
20 requirements of law and specifies the reasons for his or her opinion,
21 it is unlawful for an insurer to issue any policy in that form.

22 *SEC. 2. Section 10271.1 of the Insurance Code is amended to*
23 *read:*

24 10271.1. (a) (1) Supplemental benefits that operate to
25 safeguard life insurance contracts against lapse are defined as a
26 waiver of premium benefit or a waiver of monthly deduction
27 benefit, as applicable, in which the insurer waives the premium or
28 monthly deduction for a life insurance contract when the insured
29 becomes totally disabled, as defined by the supplemental benefit,
30 and where the waiver continues until the end of the insured's
31 disability, or for the period specified by the supplemental benefit,
32 consistent with paragraph (5).

33 (2) For purposes of this subdivision, total disability shall not be
34 less favorable to the insured than the following:

35 (A) During the first 24 months of total disability, the insured is
36 unable to perform with reasonable continuity the substantial and
37 material duties of his or her job due to sickness or bodily injury.

38 (B) After the first 24 months of total disability, the insured, due
39 to sickness or bodily injury, is unable to engage with reasonable
40 continuity in any other job in which he or she could reasonably be

1 expected to perform satisfactorily in light of his or her age,
2 education, training, experience, station in life, or physical and
3 mental capacity.

4 (3) The definition of total disability may also include
5 presumptive total disability, such as the insured's total and
6 permanent loss of sight of both eyes, hearing of both ears, speech,
7 the use of both hands, both feet, or one hand and one foot.

8 (4) The insurer may require total disability to continue for an
9 uninterrupted period of time specified by the supplemental benefit,
10 or the insurer may allow separate periods of disability to be
11 combined.

12 (5) The waiver of premium or monthly deduction benefit shall
13 continue for the period specified by the supplemental benefit, but
14 shall not be less favorable to the insured than the following:

15 (A) If the insured's total disability begins before the insured
16 attains 60 years of age, the insurer shall waive all premiums or
17 monthly deductions due for the period of the total disability, and
18 ~~if the total disability extends to the insured's attainment of 65 years~~
19 ~~of age, the insurer shall waive all further premiums or monthly~~
20 ~~deductions due.~~ *that the insured continues to be totally disabled.*

21 (B) If the insured's total disability begins after the age specified
22 in subparagraph (A), the insurer shall waive all premiums or
23 monthly deductions due for the period that the insured continues
24 to be totally disabled up to 65 years of age.

25 (6) In addition to the permissible exclusions listed in subdivision
26 (g) of Section 10271, the insurer may exclude a total disability
27 occurring after the policy anniversary or supplemental contract
28 anniversary, as applicable and as defined by the supplemental
29 benefit, on which the insured attains a specified age of no less than
30 65 years.

31 (b) "Special surrender benefit" is defined as a "waiver of
32 surrender charge benefit" wherein the insurer waives the surrender
33 charge usually charged for a withdrawal of funds from the cash
34 value of a life insurance contract or the account value of an annuity
35 contract if the owner, insured, or annuitant, as applicable, meets
36 any of the following criteria:

37 (1) Develops any medical condition where the owner's,
38 insured's, or annuitant's life expectancy is expected to be less than
39 or equal to a limited period of time that shall not be restricted to
40 a period of less than 12 months or greater than 24 months.

1 (2) Is receiving, as prescribed by a physician, registered nurse,
2 or licensed social worker, home care or community-based services,
3 as defined in subdivision (a) of Section 10232.9, or is confined in
4 a skilled nursing facility, convalescent nursing home, or extended
5 care facility, which shall not be defined more restrictively than as
6 in the Medicare program, or is confined in a residential care facility
7 or residential care facility for the elderly, as defined in the Health
8 and Safety Code. Out-of-state providers of services shall be defined
9 as comparable in licensure and staffing requirements to California
10 providers.

11 (3) Has any medical condition that would, in the absence of
12 treatment, result in death within a limited period of time, as defined
13 by the supplemental benefit, but that shall not be restricted to a
14 period of less than six months.

15 (4) Is totally disabled, as follows:

16 (A) During the first 24 months of total disability, the owner,
17 insured, or annuitant, as applicable, is unable to perform with
18 reasonable continuity the substantial and material duties of his or
19 her job due to sickness or bodily injury.

20 (B) After the first 24 months of total disability, the owner,
21 insured, or annuitant, as applicable, due to sickness or bodily injury,
22 is unable to engage with reasonable continuity in any other job in
23 which he or she could reasonably be expected to perform
24 satisfactorily in light of his or her age, education, training,
25 experience, station in life, or physical and mental capacity.

26 (C) The definition of total disability may also include
27 presumptive total disability, such as the insured's total and
28 permanent loss of sight of both eyes, hearing of both ears, speech,
29 the use of both hands, both feet, or one hand and one foot.

30 (D) The insurer may require the total disability to continue for
31 an uninterrupted period of time specified by the supplemental
32 benefit, or the insurer may allow separate periods of disability to
33 be combined.

34 (5) Has a chronic illness as defined pursuant to either
35 subparagraph (A) or (B):

36 (A) Either of the following:

37 (i) Impairment in performing two out of seven activities of daily
38 living, as set forth in subdivisions (a) and (g) of Section 10232.8,
39 meaning the insured needs human assistance, or needs continual
40 substantial supervision.

(ii) The insured has an impairment of cognitive ability, meaning a deterioration or loss of intellectual capacity due to mental illness or disease, including Alzheimer's disease or related illnesses, that requires continual supervision to protect oneself or others.

(B) Either of the following:

(i) Impairment in performing two out of six activities of daily living as described in subdivisions (b), (d), (e), and (f) of Section 10232.8 due to a loss of functional capacity to perform the activity.

(ii) Impairment of cognitive ability, meaning the insured needs substantial supervision due to severe cognitive impairment, as described in subdivisions (b), (d), and (e) of Section 10232.8.

(6) Has become involuntarily or voluntarily unemployed.

(c) The term "supplemental benefit" means a rider to or provision in a life insurance policy, certificate, or annuity contract that provides a benefit as set forth in subdivision (a) of Section 10271.

~~SEC. 2.~~

SEC. 3. Section 10295.6 of the Insurance Code is amended to read:

10295.6. (a) When a policyholder or certificate holder requests an acceleration of death benefits, the insurer shall send a statement to the policyholder or certificate holder and irrevocable beneficiary showing any effect that the payment of the accelerated death benefit would have on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. The statement shall disclose that receipt of accelerated death benefit payments may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements. In addition, receipt of an accelerated death benefit payment may be taxable and assistance should be sought from a personal tax adviser. When a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policyholder or certificate holder and irrevocable beneficiary.

(b) The accelerated death benefit shall be effective not more than 30 days following the effective date of the policy provision, rider, endorsement, or certificate.

(c) If the insurer charges a separate premium for the accelerated death benefit, then the insurer may also offer a waiver of premium benefit as defined in subdivision (a) of Section 10271.1. At the

1 time the waiver of the accelerated death benefit premium benefit
2 is claimed, the insurer shall explain any continuing premium
3 requirement to keep the underlying policy in force.

4 (d) An insurer shall not unfairly discriminate among insureds
5 with different qualifying events covered under the policy or among
6 insureds with similar qualifying events covered under the policy.
7 An insurer shall not apply further conditions on the payment of
8 the accelerated death benefits other than those conditions specified
9 in the accelerated death benefit.

10 (e) ~~The~~ *No less than one month after payment of an accelerated*
11 *death benefit, the* insurer shall provide the policyholder or
12 certificate holder with a report of any accelerated death benefits
13 paid out during the prior month, an explanation of any changes to
14 the policy or certificate, death benefits, and cash values on account
15 of the benefits being paid out, and the amount of the remaining
16 benefits that can be accelerated at the end of the prior month. The
17 insurer may use a calendar month or policy or certificate month.

18 (f) The conversion benefit available to group certificate holders
19 on termination of employment pursuant to paragraph (2) of
20 subdivision (a) of Section 10209 shall include a benefit comparable
21 to the accelerated death benefit. This requirement may be satisfied
22 by an individual policy or certificate. This requirement, subject to
23 the approval of the commissioner, may be satisfied by arrangement
24 with another insurer to provide the required coverage.

25 (g) When payment of an accelerated death benefit results in a
26 pro rata reduction in cash value, the payment may be applied
27 toward repaying a portion of the loan equal to a pro rata portion
28 of any outstanding policy loans if disclosure of the effect of
29 acceleration upon any remaining death benefit, cash value or
30 accumulation account, policy loan, and premium payments,
31 including a statement of the possibility of termination of any
32 remaining death benefit, is provided to the policyholder or
33 certificate holder. The policyholder or certificate holder shall
34 provide written consent authorizing any other arrangement for the
35 repayment of outstanding policy loans.

36 *SEC. 4. Section 10295.15 of the Insurance Code is amended*
37 *to read:*

38 10295.15. (a) Except at the request of the policyholder or
39 contractholder, all accelerated death benefit provisions or
40 supplemental contracts shall be renewable for the life of the

1 underlying life insurance policy, provided the premiums are timely
2 paid. The statement shall be prominently displayed on the first
3 page of the accelerated death benefit policy or rider.

4 (b) ~~Term life insurance policies shall also~~ *If an accelerated*
5 *death benefit is offered with an underlying term life insurance*
6 *policy, the accelerated death benefit shall* include a prominent
7 statement on page one that the accelerated death benefit terminates
8 with the policy.